

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LEE JENKINS,

Defendant-Appellant.

UNPUBLISHED

October 30, 2001

No. 224820

Wayne Circuit Court

Criminal Division

LC No. 99-003523

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of kidnapping (child enticement), MCL 750.350, and two counts of second-degree criminal sexual conduct, MCL 750.520c, involving an assault on a nine-year-old girl. He was sentenced to concurrent prison terms of forty to eighty years for the kidnapping conviction and ten to fifteen years each for the CSC convictions. He appeals as of right. We affirm.

Defendant argues that the trial court erred in refusing to suppress his statements in which he admitted abducting and penetrating the child victim. Defendant gave the statements after being held for more than forty-eight hours without being arraigned. Following a warrantless arrest, the detainment of an arrestee without an arraignment, for more than forty-eight hours, is presumed to be unconstitutional. *People v Whitehead*, 238 Mich App 1, 2; 604 NW2d 737 (1999). The erroneous admission of an inculpatory statement is reviewed under a harmless-error analysis to determine whether, absent the confession, “honest, fair-minded jurors might very well have brought in not-guilty verdicts.” *Id.* at 9, quoting *Chapman v California*, 386 US 18, 26; 87 S Ct 824; 17 L Ed 2d 705 (1967). Because judicial expediency allows courts to address issues according to their ease of resolution, we first consider whether any error in admitting the statements would have been harmless. *Whitehead, supra* at 6. If so, we need not consider whether there was error in admitting the confession.

In the instant case, defendant was identified by the complainant herself. Her description of the crime to police, including the type of vehicle that defendant drove, the furnishings in the apartment where he assaulted her, the cut on defendant’s hand and the design of his key chain, were all supported by evidence at trial. The vehicle involved in the incident was recovered with the contents described by complainant. The registration of the vehicle led police to an apartment that matched complainant’s description. Photos of that vehicle and apartment were admitted at trial, along with evidence that defendant had keys and access to both the vehicle and the

residence. The proof against defendant in this case was so overwhelming that reasonable jurors could have found guilt regardless of defendant's statements. *Id.* Thus, based on this overwhelming evidence, any error in admitting defendant's statements was harmless.

Defendant also challenges the sentence he received on the kidnapping conviction, which exceeded the recommendation of the sentencing guidelines.¹ We review defendant's sentence under the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990). Sentences that depart from the guidelines range are subject to careful scrutiny on appeal. *People v Cain*, 238 Mich App 95, 132; 605 NW2d 28 (1999). However, "the 'key test' of proportionality is not whether the sentence departs from or adheres to the recommended range, but whether it reflects the seriousness of the matter." *Id.*, quoting *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Contrary to defendant's claim, the trial court's belief that defendant should have been convicted of a greater crime was not improper. "Where, as here, there is record support that a greater offense has been committed by a defendant, it may constitute an aggravating factor to be considered by the judge at sentencing without an admission of guilt by the defendant." *People v Purcell*, 174 Mich App 126, 130; 435 NW2d 782 (1989). Defendant's own statements provided evidence that he sexually penetrated the complainant. Further, defendant abducted a child at random from the street and drove her to a location over thirty miles away to commit this assault. It was also permissible for the trial court to consider defendant's psychological report as a basis for departure. *Id.* We find no abuse of discretion. *Milbourn, supra.*

Affirmed.

/s/ Jessica R. Cooper

/s/ David H. Sawyer

/s/ Donald S. Owens

¹ Because the offenses were committed on December 22, 1998, prior to the January 1, 1999, effective date of the statutory guidelines, MCL 769.34(1) and (2), the judicial guidelines apply in this case. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000).